

### **REMARKS**

This responds to the Office Action mailed on May 16, 2006, and the references cited therewith. By this amendment, claims 1, 10 and 13 were amended. Claim 29 was added. No claims \_\_\_\_ were canceled. As a result, claims 1-29 are now pending in this application.

#### **§112 Rejection of the Claims**

**Rejection:** Claim 10 was rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

**Response:** Claim 10 has been amended to make the claim depend from claim 9. In claim 9 the opening is introduced. As a result, the opening of claim 10 now has proper antecedent basis.

#### **§102 Rejection of the Claims**

**Rejection:** Claims 1-3, 6-9, 11-17 and 20-28 were rejected under 35 U.S.C. § 102(b) for anticipation by U.S. Patent No. 3,126,881 to Blotsky.

**Response:** Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Claim 1, as now amended, recites “...a combustion chamber; and a burn pot within the combustion chamber further comprising: a sidewall, at least a portion of the sidewall within the combustion chamber; and a plate translatable through an internal volume of the burn pot

positioned between the ends of the sidewall; and a movable floor, wherein the plate is moved to form separate volumes of the burn pot.” Applicant contends that Blotsky fails to teach a burn pot. Blotsky teaches a barbeque grill. Charcoal is placed in the bowl 11, and used to cook foodstuffs placed on the wire grill (not shown). When the user wants to discard the charcoal, the user moves plate 28 to expose openings in the bottom wall 13 of the bowl 11. The discarded charcoal then passes through the openings into the frusto-conical body 37. The charcoal fuel is not placed into the frusto-conical body 37 to produce heat. In fact, the user is through with producing heat and wants to discard the fuel safely when the user causes the fuel to move into the frusto-conical body 37. Therefore, the frusto-conical body 37 is not a burn pot as recited in the claim.

Even if one can interpret Blotsky as having a burnpot, the Blotsky reference fails to disclose a combustion chamber and a separate burn pot within the combustion chamber. The Examiner contends that element 11 is the combustion chamber and that element 37 is the burn pot. (see paragraph 6 of the Office Action of October 19, 2005). In the Office Action mailed May 16, 2005, the Examiner now seems to contend that the burn pot also includes the “top rods 34” (see page 3, paragraph 5 of the Office Action dated May 16, 2006). The Examiner’s new interpretation of the barbeque grill now seems to place the rods 34 into the combustion chamber. Applicant feels this new interpretation is clearly a case of using the claims as a roadmap to the invention as claimed. It should be pointed out that the specification of the Blotsky reference refers to element 11 as a bowl and element 37 as a frusto-conical bowl member. Blotsky also specifically teaches that the frusto-conical member 37 is “...arranged below the bowl 11...” (see column 2, line 40 of Blotsky). In addition, the “...conical member is arranged contiguous to the bottom of the grill bowl for receiving the coals that drop down through the openings thereabove,...the cone-shaped member being detachable...” (see column 1, lines 27-35 of Blotsky). As a result, the burnpot is not within the combustion chamber in Blotsky. Applicant has amended claim 1 to further point this out. As amended, at least a portion of the sidewalls of the burnpot have to be within the combustion chamber. As pointed out above, the conical-member is disposed below the bowl. The sidewalls of the conical-member are also below the bowl and therefore outside the combustion chamber of Blotsky. This further distinguishes the invention of claim 1 from the Blotsky reference. Blotsky specifically sets forth the arrangement

of the elements of the barbeque grill. The frusto-conical body 37 "...is arranged below the bowl 11..." (See column 2, lines 39-40 of Blotsky). As a result, the burn pot (frusto-conical body 37 of Blotsky according to the Examiner) is not positioned within the combustion chamber (bowl 11 of Blotsky according to the Examiner) and the sidewalls of the burnpot are not within the chamber. Therefore, even if the Examiner could properly equate the frusto-conical body 37 for receiving discarded fuel to the claimed burn pot, the Examiner has failed to set forth a proper *prima facie* case of anticipation since Blotsky fails to disclose each and every element of the claimed invention, arranged as in the claim. As a result, claim 1 now overcomes the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claims 2-3, 6-9 and 11-12 depend from claim 1 and include the recitations of claim 1 by their dependency. As a result, claims 2-3, 6-9 and 11-12 also overcome the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claim 13 recites a "...burn pot comprising: a first sidewall portion; a second sidewall portion; and a translatable plate interposed between the first sidewall portion and the second sidewall portion, the translatable plate capable of at least two positions, wherein the plate has an opening therein corresponding substantially to a cross sectional area of an inside area of the first sidewall portion or the second sidewall portion, the inside surface of the opening in the translatable plate contiguous with the inside surface of the burnpot." The Blotsky reference fails to disclose a translatable plate interposed between the first sidewall portion and the second sidewall portion of the burn pot that has an opening therein that forms a portion of the inside surface of the burnpot. The burn pot (element 37 of Blotsky according to the Examiner) includes "...a horizontally disposed screen-like member which is suitably mounted within the body member 37..." (See column 2, lines 46-48 of the Blotsky reference). A screen-like member is not a plate as recited in claim 13. Furthermore, the screen-like member is not translatable between at least two positions. In the Office Action dated May 16, 2006, the Examiner contends that plate 28 corresponds to the translatable plate of claim 13. However, the plate 28 is situated on an end of the frusto-conical member (interpreted as the burn pot by the Examiner) rather than being disposed between ends of the burn pot. Since the plate 28 is situated at the end of the "burnpot", there is no first sidewall portion or a second sidewall portion. The frusto-conical member (Examiner's burn pot) does not have a first sidewall portion and a second sidewall

portion. Therefore, the Examiner has failed to set forth a proper *prima facie* case of anticipation since Blotsky fails to disclose each and every element of the claimed invention, arranged as in the claim. As a result, claim 13 now overcomes the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claims 14-17 and 20-22 depend from claim 13 and include the recitations of claim 13 by their dependency. As a result, claims 14-17 and 20-22 also overcome the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claim 23 recites "...combusting a fuel in a burn pot within a combustion chamber; forming an ash column within the burn pot; and moving a translatable plate through the burn pot to remove a portion of the ash column; and moving a plate that includes a floor and an opening having a cross-sectional area at least equal to the area of the burn pot when removing a portion of the ash column." The Blotsky reference fails to disclose moving a translatable plate through the burn pot. The Blotsky reference also fails to disclose moving a plate that includes a floor and an opening having a cross-sectional area at least equal to the area of the burn pot when removing a portion of the ash column. As mentioned above, the screen-like member is "...mounted within the body member 37..." (See column 2, lines 46-48 of the Blotsky reference) rather than being moving through the burnpot. There is also no floor associated with the translatable plate in the Blotsky reference. Therefore, there is no way one can move a plate that includes a floor. Therefore, the Examiner has failed to set forth a proper *prima facie* case of anticipation since Blotsky fails to disclose each and every element of the claimed invention, arranged as in the claim. As a result, claim 23 now overcomes the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claims 24-28 depend from claim 23 and include the recitations of claim 23 by their dependency. As a result, claims 24-28 also overcome the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

§103 Rejection of the Claims

**A. Rejection:** Claims 4, 18, 19, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blotsky (U.S. Patent No. 3,126,881) as applied to the claims above in view of Stewart et al. (U.S. Patent No. 3,209,743).

**B. Response:** In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142 (citing *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claims 4 depends directly from claim 1. Claim 4 includes the recitations of claim 1 by its dependency. The Examiner has failed to make out a proper *prima facie* case of obviousness since the combination of Blotsky and Stewart et al. fails to suggest all the claim limitations as set forth in claims 1 and 4. As mentioned previously, claim 1 recites "...a combustion chamber; and a burn pot within the combustion chamber further comprising: a sidewall, at least a portion of the sidewall within the combustion chamber; and a plate translatable through an internal volume of the burn pot positioned between the ends of the sidewall; and a movable floor, wherein the plate is moved to form separate volumes of the burn pot." The Blotsky reference fails to disclose a combustion chamber and a separate burn pot within the combustion chamber. The Examiner contends that element 11 of Blotsky is the combustion chamber and that element 37 is the burn pot. (see paragraph 6 of the Office Action of October 19, 2005). In addition the claim has been amended so that at least one portion of the sidewall is within the combustion chamber. As discussed above, the conical member 37 of Blotsky reference does not have a sidewall that includes a portion that is within the combustion chamber. Stewart et al. has a similar structure

and refers to the “burn pot” as a receptacle 23. The receptacle of Stewart also does not have a sidewall that includes a portion that is within the combustion chamber.

As a result, the combination of Blotsky and Stewart et al. fails to teach or suggest a burn pot positioned within the combustion chamber. The combination of the references also fails to teach or suggest a burnpot having a sidewall having at least a portion that is within the combustion chamber. Simply put, the combination of Blotsky with Stewart et al. fails to teach or suggest the elements as claimed.

It should also be pointed out that moving the burn pot (frusto-conical body 37 of Blotsky or the receptacle 23 of Stewart et al.) into the combustion chamber (such as the bowl of Blotsky) will destroy the references. In each case, charcoal and ashes are discarded by dropping the discarded materials into the frusto-conical body 37 (Blotsky) or the receptacle 23 (Stewart et al.). If the so called “burn pot” is moved into the bowl or so called “combustion chamber” the user will no longer be able to easily discard the charcoals. In addition, the burn pot would interfere with the grill. This destruction of either one or both of the references is evidence against a suggestion or a motivation, in either the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. As a result, claim 4 is not obvious in view of the combination of Blotsky (U.S. Patent No. 3,126,881) and Stewart et al. (U.S. Patent No. 3,209,743).

Claims 18, 19 and 22 depend, either directly or indirectly, from claim 13, and include the recitations of claim 13 by their dependency. The Examiner has failed to make out a proper *prima facie* case of obviousness since the Blotsky reference fails to teach or suggest all the claim limitations recited in claim 13. As discussed above, there is no teaching or suggestion of a translatable plate interposed between the first sidewall portion and the second sidewall portion of the burn pot. The burn pot (element 37 of Blotsky according to the Examiner) includes “...a horizontally disposed screen-like member which is suitably mounted within the body member 37...” (See column 2, lines 46-48 of the Blotsky reference). The screen-like member of Blotsky is not a plate as recited in claim 13. Furthermore, the screen-like member is not translatable between at least two positions. The plate 28 of Blotsky is located on one end of the frusto-conical member and therefore is not interposed between a first sidewall portion and a second sidewall portion. In fact, there is no second sidewall portion in Blotsky. The Stewart et al.

reference does not teach this member or a first sidewall portion and a second sidewall portion. In fact, Stewart is devoid of any member within the body member (receptacle 26 of Stewart et al.). Therefore, the Examiner has failed to set forth a proper *prima facie* case of obviousness since references the Examiner combines fail to teach or suggest all the claim limitations.

As a result of the above, claims 4, 18, 19 and 22 now overcomes the Examiner's rejection under 35 U.S.C. § 103(a) as being unpatentable over Blotsky (U.S. Patent No. 3,126,881) as applied to the claims above in view of Stewart et al. (U.S. Patent No. 3,209,743).

**C. Rejection:** Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Blotsky (U.S. Patent No. 3,126,881) as applied to claim 1 above in view of Mendive et al. (U.S. Patent No. 5,582,117).

**D. Response:** Claim 5 depends directly from claim 1. Claim 5 includes the recitations of claim 1 by its dependency. The Examiner has failed to make out a proper *prima facie* case of obviousness since the combination of Blotsky and Mendive et al. fails to suggest all the claim limitations as set forth in claims 1 and 5. As mentioned previously, claim 1 recites "...a combustion chamber; and a burn pot within the combustion chamber further comprising: a sidewall, at least a portion of the sidewall within the combustion chamber; and a plate translatable through an internal volume of the burn pot positioned between the ends of the sidewall; and a movable floor, wherein the plate is moved to form separate volumes of the burn pot." The Blotsky reference fails to disclose a combustion chamber and a separate burn pot within the combustion chamber, or a plate translatable through an internal volume of the burn pot. Furthermore, Blotsky fails to teach or suggest a burnpot having a sidewall having a portion within the combustion chamber. The Mendive et al. reference also fails to teach these elements. As a result, the combination of Blotsky and Mendive et al. falls short of the invention as claimed in claims 1 and 5. Simply put, the combination of Blotsky with Mendive et al. fails to teach or suggest all of the elements of claims 1 and 5. As a result, claim 5 is not obvious in view of the combination of Blotsky (U.S. Patent No. 3,126,881) and Mendive et al. (U.S. Patent No. 3,209,743).

*Allowable Subject Matter*

Claim 10 was indicated to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in the Office Action. New claim 29 is claim 10 written in allowable form. No new matter has been added.



**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6977 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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